**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**

**and**

**HON'BLE SHRI JUSTICE G.BHAVANI PRASAD**

**W.P.NO.6498 OF 2006**

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Between:

M/s. Silver Plate Hotels Pvt. Ltd.,

Represented by its Director,

Satish Khanna.

**..... Petitioner**

AND

Commissioner of Police, Hyderabad City at

Hyderabad and 3 others.

**.....Respondents**

**::JUDGMENT::**

**Counsel for the Petitioner : Sri Vedula Venkata Ramana**

**Counsel for Respondent Nos.1 to 4 : Government Pleader for Home**

**Dated 21/04/2006**

**Per Sri G.S.Singhvi, CJ**

This is a petition for quashing order dated 28.3.2006 passed by Commissioner of Police, Hyderabad City (respondent No.1) vide which he rejected the petitioner's request for renewal of licence for public place of entertainment with the observation that its case will be reconsidered for issue of entertainment licence for running a bar and restaurant subject to fulfilling parking space requirements as laid down in G.O.Ms.Nos.422 and 423 of Municipal Administration Department dated 31-7-1998 and G.O.Ms.No.129 Home (Legal-II) Department dated 2-7-2005.

The petitioner has been running a bar and restaurant since 1985 at premises

bearing No.1-7-194/195, S.D.Road, Secunderabad. It is holding bar licence issued under the Andhra Pradesh Excise Act, 1968 and trade licence issued under Section 521 of the Hyderabad Municipal Corporation Act, 1955 and another licence issued under the Hyderabad City Police Act, 1348 Fasli (for short 'the City Police Act'). The last mentioned licence is required to be renewed every year. For the year 2006, the petitioner submitted renewal application dated
7-12-2005 and then filed Writ Petition No.632 of 2006 for restraining the respondents not to interfere with its business in conducting live music with male and female singers. During the pendency of that petition, respondent No.1 passed the impugned order declining the petitioner's prayer for renewal of licence for public place of entertainment.

The petitioner has challenged the impugned order not only on the ground of arbitrary exercise of power by respondent No.1 but also on the ground of hostile discrimination by alleging that a large number of hotels and restaurants operating in the city are being allowed to continue their operations notwithstanding the fact that they do not have any parking space of their own. It is the case of the petitioner that if other bars and restaurants and hotels which do not have any parking place of their own could be allowed to operate/function, there is no justification to refuse renewal of its licence simply because the parking space available with it falls slightly short of the prescribed norms. In the affidavit filed by Sri Satish Khanna, one of the directors of the petitioner, it has also been averred that the impugned order has been passed because the action taken by the respondents to prohibit the conduct of live music with male and female singers in the licenced premises was challenged in Writ Petition No.632 of 2006.

In the counter affidavit dated 10-4-2006 filed by respondent No.1, it has been averred that in view of the judgment of the Supreme Court in Civil Appeal Nos.1857 and 1858 of 2000, the department is not insisting on obtaining of amusement licence for the bar and restaurants. It has been further averred that after the decision of Writ Petition No.2026 of 2005 and batch, the deponent considered the application made by the writ petitioner for renewal of licence and rejected the same because the parking space provided by the petitioner was not found to be adequate. In paragraph 5 of his affidavit, respondent No.1 has averred as under:

"I further respectfully submit that the contention of the

petitioner that these parking rules cannot be applied to old buildings constructed prior to issuance of the aforestated G.O.s is not tenable. In this regard I further submit that the petitioner did not challenge the G.O.Ms.No.129 dated 2.7.2005 and G.O.Ms.No.422 and 423 dated 31.7.1998 as such it is not open for the petitioner to say that the rules cannot be applied to the Bar and Restaurant. I further submit that the contention of the petitioner that sufficient parking space was provided for the petitioner's Bar and Restaurant is not true. The parking place provided by the petitioner is only 395 square meters whereas the parking place required as per the norms should be 438 square meters. In the report of the Inspector of Police (Traffic), Begumpet, Hyderabad, it was stated that apart from the petitioner's Bar and Restaurant, there are other establishments located in the complex. The other establishments M/s.Viswam Lodge at 2nd and rd floor with 132 rooms and M/s.Disneys Ice Cream Centre, M/s.Sabarwal Travels Corporation Office and M/s.Southern Travels Office are located in the said complex. Hence the contention of the petitioner that the entire cellar is earmarked for parking exclusively for vehicles provided to the petitioner's Bar and Restaurant is not true and the same is denied. Hence, it is clear that the petitioner's Bar and Restaurant has not provided sufficient parking place and the impugned order dated 28.3.2006 is legally valid and sustainable in the eye of law. I further humbly submit that in the impugned order it is made clear that whenever the petitioner's Bar and Restaurant provides sufficient parking place as per the said G.Os, their application for renewal of entertainment licence will be considered. Hence the writ petition is devoid of any merits."

Arguments in this case were heard on 13-4-2006. During the course of hearing Sri V.Venkata Ramana, learned counsel for the petitioner gave out that while renewal of licence of his client was refused, respondent No.1 renewed the licence of M/s. Sky Moon Bar & Restaurant, Nallakunta, Hyderabad even though the owner of the said bar and restaurant does not have adequate parking space. By taking note of the statement of Sri V.Venkataramana, the Court directed the Government Pleader to seek instructions from respondent No.1 and make a statement as to why the petitioner is not being allowed to operate the bar and restaurant on the terms and conditions similar to those incorporated in the order passed in the case of M/s. Sky Moon Bar & Restaurant.

Thereafter, respondent No.1 filed affidavit dated 20-4-2006 stating therein that the petitioner's plea of discrimination is not well founded. According to respondent No.1, applications for renewal made by 31 bar and restaurants were rejected and renewal was granted only in respect of 5 bars and restaurants. He has further averred that before rejecting renewal of entertainment licence for the petitioner's bar and restaurant, a report was called for from the concerned Inspector of Police (Traffic), Begumpet Police Station, who submitted report dated 13-3-2006 that the bar and restaurant does not possess the requisite parking space. The averments contained in paragraphs paragraphs 2 and 3 of the additional affidavit filed by respondent No.1, which have bearing on the decision of this petition read as under:

> "I respectfully submit that I filed a detailed counter affidavit in this writ petition and the same came up for hearing on 13-4-2006. I was informed that during the course of arguments an order passed by me in respect of M/s Sky Moon and Bar Restaurant situated at Nallakunta, Hyderabad was produced before this Hon'ble Court and the petitioners counsel contended that permission was given to Sky Moon Bar and Restaurant whereas the permission was rejected for the petitioner's bar and restaurant. The contention raised by the petitioner that the petitioner's bar and restaurant was singled out and as such there is discrimination shown by me while passing the impugned orders dated 28.3.2006 is not true and the same is denied. I submit that I renewed the entertainment licence in respect of 5 Bar and Restaurants and the application of the remaining 31 Bar and Restaurants were rejected of whom again 25 Bar and Restaurants were reported to be not having required parking place. Two Bar and Restaurants did not apply for renewal of entertainment licence.
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> I respectfully submit that required parking place was reported to have been provided for by M/s.Sky Moon Bar and Restaurant, Nallakunta and hence entertainment licence was renewed with certain conditions. I further respectfully submit that before rejecting the grant of renewal of entertainment licence for the petitioner's Bar and Restaurant, a report was called for from the concerned Inspector of Police (Traffic), Begumpet Police Station and the Inspector of Police (Traffic) Begumpet, submitted his report dated 13.3.2006. In the said report, it is pointed out that there are several other establishments in the complex where the petitioner's bar and restaurant is situated and that the petitioner's bar and restaurant does not possess the requisite parking space as required under G.O.Ms.No.129, Home (Legal-II) Department, dated 2.7.2005 and G.O.Ms.No.423, M.A & UD (MA) Department

dated 31.7.1998 respectively."

Further arguments have been heard and documents including of those filed with the additional affidavit of respondent No.1 have been perused.

While Sri Venkata Ramana reiterated the plea set up by his client and argued that the order passed by respondent No.1 refusing to renew the licence of the petitioner should be declared as vitiated due to violation of Article 14 of the Constitution, learned Government Pleader for Home justified the decision of the 1st respondent by contending that adequate parking space has not been provided for running the bar and restaurant. Learned Government Pleader referred to G.O.Ms.No.129 dated 2.7.2005 vide which respondent No.1, in exercise of the power vested in him under Section 21(1)(f) and (2) of the City Police Act framed the Hyderabad and Secunderabad (Public Place of halt/Place of Public Entertainment/Amusement) Rules, 2005 (for short 'the Rules) and argued that respondent No.1 has rightly declined renewal of the licence of the petitioner because the parking space provided by it does not satisfy the parameters enumerated in G.O.Ms.Nos.422 and 423 dated 31-7-1998.

In the context of the averments contained in the two affidavits filed by respondent No.1, we called upon the learned Government Pleader for Home to show that the officer concerned had applied the same parameters relating to parking area for all bar and restaurants and hotels. In response to the Court's query, learned Government Pleader produced a copy of communication No.Tr.T4/4043/2005 dated 30.12.2005 sent by Additional Commissioner of Police (Traffic), Hyderabad to respondent No.1. We have gone through the communication of the Additional Commissioner of Police (Traffic) and the accompanying statement. In the last column of the statement, which contains a reference to 22 bars and restaurants, the following stock phrases have been used:

"Sufficient parking space provided."

"Sufficient parking space not provided."

To say the least, the statement made available by the Additional Commissioner of Police (Traffic), Hyderabad to respondent No.1 is not only vague to the Court but is fanciful and does not make any sense. It was not expected of a senior officer of the rank of Additional Commissioner of Police to append his signatures on the statement prepared by his subordinates, who do not appear to be even conversant with the requirement of parking area, which the owner of the bar and restaurant is required to provide in terms of the rules and the relevant government orders. The officers/officials, who appear to have been entrusted with the task of inspecting the premises of various bars and restaurants have not bothered to indicate the total measurements of the area/parking space available with each bar and restaurant and/or hotel and without noticing this grave lacuna in the report sent by the Additional Commissioner of Police (Traffic), Hyderabad, respondent No.1 mechanically passed orders granting or refusing to grant renewal of the licence of the petitioner and similarly situated persons. In our considered view, failure of respondent No.1 to uniformly apply a rationale and discernible criteria for deciding the applications submitted by the owners of bars and restaurants for renewal of the licence leads to an irresistible inference that the impugned order is wholly arbitrary and discriminatory. As a corollary to this, we hold that the rejection of the petitioner's application for renewal of licence only on the ground of non-providing of required parking space is violative of Article 14 of the Constitution of India.

In view of the above conclusion, we do not consider it necessary to deal with other points raised by the petitioner for questioning the legality of the impugned order.

In the result, the writ petition is allowed. Order dated 28-3-2006 is quashed. Respondent No.1 is directed to reconsider the petitioner's application for renewal of licence and pass appropriate order within a period of seven days from today. The petitioner is directed to appear before respondent No.1 on 24.4.2006 and produce documents and other evidence in support of its entitlement for renewal of the licence. It will also be open to the petitioner to contend that the provisions contained

in the Rules and G.O.Ms.No.129, are not applicable to its case. Respondent No.1 should pass appropriate order after considering the points raised by the representative of the petitioner.

We hope and trust that this time respondent No.1 will pass a reasoned and non-discretionary order.

**G.S.SINGHVI, CJ**

**Dt.21/4/2006**

**G.BHAVANI PRASAD,J**

**msv**